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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
1998 Biennial Regulatory Review --) IB Docket No. 98-118
Review of International Common Carrier)
Regulations)
_____)

REPLY COMMENTS OF AMERITECH

Ameritech hereby replies to some of the comments filed on the Notice of Proposed Rulemaking ("Notice") in the above-captioned docket.¹ In the Notice, the Commission solicits comments on a variety of proposals to streamline the section 214 international authorization process and simplify the rules applicable to international carriers.

Ameritech vigorously supports the Commission's initiative to simplify and streamline its regulation of international common carriers. The changes proposed by the Commission will promote the public interest by eliminating regulatory requirements that are no longer necessary in light of increasing competition in the international services market and enhancing competition among providers of international services by permitting them to respond quickly to changes in market conditions. They are, therefore, wholly consistent with the procompetitive, deregulatory objectives of the Telecommunications Act of 1996 ("1996 Act"), and should be adopted.

¹ *In the Matter of 1998 Biennial Review -- Review of International Common Carrier Regulations*, IB Docket No. 98-118, Notice of Proposed Rulemaking, FCC 98-149 (rel. July 14, 1998).

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I. The Commission has Authority to, and Should, Adopt a Blanket Authorization for International Service Along Unaffiliated Routes.

In its initial comments, Ameritech supported the Commission's proposal to adopt a blanket section 214 authorization for international service provided by nondominant carriers along unaffiliated routes. Implementation of this proposal will promote competition in the provision of international services by eliminating unnecessary regulatory burdens and delay, establish conditions that replicate an unregulated market, and reduce significantly administrative burdens on the Commission, without threatening competition in the international services market.

The vast majority of the comments voiced similar views and supported adoption of a blanket section 214 application for international services on unaffiliated routes. Only two parties, the Federal Bureau of Investigation ("FBI") and the Secretary of Defense ("DoD") oppose such a blanket authorization.² These parties charge alternately that the Commission lacks authority to adopt such an authorization,³ and that such an authorization should not be adopted because, they assert, there could be cases in which carriers could initiate service with resulting harm to national security or law enforcement interests.⁴

² As discussed below, although MCI Telecommunications Corp. ("MCI") supports granting a blanket section 214 authorization for international services on unaffiliated routes, it urges the Commission to exclude from blanket authorization any applicant seeking authority to provide international services from any region in which it has bottleneck control over local facilities. MCI Comments at 4.

³ FBI Comments at 3-5 (arguing that "it is beyond doubt that Congress [sic] intended – indeed, mandated – that no carrier service provision would proceed without the carrier first (a) obtaining certification from the Commission and (b) appropriate notice being served, with a statutory right-to-be-heard, with regard to the Secretary of Defense, among others who may be parties in interest").

⁴ FBI Comments at 6, DoD Comments at 2-5.

There is, however, no merit to the assertion that the Commission lacks authority to grant a blanket section 214 authorization for international services. The Commission and courts have long recognized that the Commission has broad authority to interpret and apply section 214 in a manner likely to promote goals of the Communications Act of 1934, as amended, including by implementing its section 214 authority through rulemaking rather than adjudication of specific applications.⁵ The Commission has, moreover, already exercised this authority to grant a blanket section 214 authorization for the provision of domestic services by nondominant carriers.⁶ In light of the fact that section 214 does not differentiate in any way between the procedures applicable to domestic and international services, the Commission plainly has authority to grant a blanket international section 214 authorization for international services.

These parties' assertion that the blanket authorization proposed by the Commission might implicate national security, law enforcement, or diplomatic concerns also does not withstand scrutiny. All of the concerns articulated by the FBI and DoD relate to foreign control over U.S. telecommunications networks. The Commission's proposal already addresses the vast majority of these concerns by limiting the proposed

⁵ See *FCC v. RCA Communications, Inc.*, 346 U.S. 86, 90 (1953) (holding that the Commission has considerable discretion in deciding how to make its section 214 public interest finding); *Washington Utilities and Transportation Commission v. FCC*, 513 F.2d 1142, 1160-65 (9th Cir.), *cert. denied*, 423 U.S. 836 (1975) (holding that the Commission has authority to develop general policies favoring entry of competitive carriers under section 214 by rulemaking rather than considering each application individually); *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorization Therefor*, CC Docket No. 79-252, First Report and Order, 84 FCC2d 1, 41 (1980) (*Competitive Carrier, First report and Order*); Second Report and Order, 91 FCC2d 59, 73 (1982) (*Competitive Carrier Second Report and Order*) (eliminating domestic section 214 application requirements for resale carriers).

⁶ 47 C.F.R. § 63.07(a); *Competitive Carrier Second Report and Order*, 91 FCC2d at 73 (eliminating domestic section 214 requirements for resale carriers); *Competitive Carrier Fifth Report and Order*, 98 FCC2d 1191, 1203 (codifying the rule that nondominant carriers are not required to make filings under section 214 to obtain authorization to provide domestic services).

blanket authorization only to nondominant U.S. carriers on unaffiliated routes. It is, therefore, quite unlikely that a foreign entity could gain control over particular routes to the detriment of U.S. national security or law enforcement interests, or gain such control over international capacity as to leave the United States with inadequate capacity in the event of an international crisis. Additionally, under the Commission's proposal, carriers providing service pursuant to the blanket authorization would continue to be subject to all of the Commission's rules and policies governing international service, including, *inter alia*, those relating to National Security Emergency Preparedness, CPNI, reporting requirements and notifications of affiliations with foreign carriers. Consequently, the Commission's proposal already addresses all, or substantially all, of the concerns raised by the FBI and DoD. To the extent there are other law enforcement, national security and diplomatic concerns implicated, they can be adequately addressed through *post hoc* review of carriers' notices of initiation of service pursuant to the blanket authorization. Accordingly, the Commission should adopt a blanket section 214 authorization for international service provided by nondominant carriers along unaffiliated routes.

In its comments, MCI generally supports the Commission's proposal to grant a blanket authorization to carriers seeking to provide service to any unaffiliated international point.⁷ It asserts, however, that the Commission should exclude from the blanket authorization any applicant seeking to provide service from a region in which it has bottleneck control over local facilities because, it claims, such carriers may be able to leverage their control over local facilities to harm competition in the U.S. international

⁷ MCI Comments at 2.

services market.⁸ Section 251 of the Communications Act, however, eliminates local exchange carriers' bottleneck control over local facilities by granting telecommunications carriers nondiscriminatory access to such facilities. Moreover, at least with respect to the Bell Operating Companies ("BOCs"), the Commission has already determined that once a BOC has received section 271 authority to provide in-region interLATA services (including international services that originate in-region), it is nondominant and cannot leverage control over local facilities to harm competition in the international services market.⁹ Accordingly, the BOCs should be included in any blanket authorization adopted in this proceeding as soon as they receive section 271 authority.

II. Ameritech Does Not Support Certain Proposals to Expand the Commission's Streamlining Initiative.

In contrast to the foregoing parties, several other commenters suggest that the Commission's proposals do not go far enough, urging the Commission to expand further its deregulatory proposals. Specifically, several parties have urged the Commission to forbear from requiring CMRS providers to obtain international section 214 authorizations or to extend the blanket authorization to any foreign-affiliated CMRS carrier that is nondominant on a particular route.¹⁰ Ameritech believes, however, that there is no basis for treating CMRS licensees differently from other common carriers, and that the

⁸ *Id.* at 4.

⁹ *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area, and Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket Nos. 96-149, 96-61, Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, FCC 97-142 at para. 139 (1997).

¹⁰ See e.g. Comments of Iridium U.S., L.P. ("Iridium"), and the Personal Communications Industry Association ("PCIA").

Commission's regulations should be technology-neutral. In addition, Ameritech believes that a blanket authorization would be preferable to forbearing from requiring international section 214 authorizations because a blanket authorization would ensure continued Commission oversight of international carriers. Consequently, it does not support forbearance from section 214 authorization requirements for CMRS providers offering international services.

In addition, MCI urges the Commission to grant a blanket authorization to provide international simple resale ("ISR") between the United States and any WTO country where at least 50 percent of the settled U.S.-billed traffic on that route is at or below the relevant benchmark settlement rate.¹¹ There is, however, simply no need to grant such an authorization at this time because the process currently in effect works well and meets the continuing need for transparency. In addition, the Commission has consistently acted expeditiously on requests for authorization to provide ISR to particular countries. Consequently, even the Commission's existing procedures have not unreasonably delayed carriers seeking to provide ISR. Moreover, MCI's proposal could lead to significant confusion concerning the permissibility of ISR on specific routes. Because each carrier would self-determine whether there is sufficient competition to permit ISR to a particular country, different carriers could reach different conclusions concerning the permissibility of ISR on particular routes. Accordingly, the Commission should reject MCI's proposal.

¹¹ MCI Comments at 9.

III. Conclusion.

In considering the issues raised in this proceeding, the Commission should be guided by the procompetitive, deregulatory objectives of the 1996 Act, which support grant of a blanket section 214 authorization for the provision of international services on unaffiliated routes. While the Commission must also consider the impact of its rules on national security, law enforcement, and diplomatic concerns, it should recognize that its existing policies and rules already provide sufficient safeguards to address the concerns articulated by the FBI and DoD about such a blanket authorization. Accordingly, the Commission should adopt its proposal to grant a blanket section 214 authorization to provide international services on unaffiliated routes. In addition, the Commission should clarify that any blanket authorization adopted in this proceeding will apply fully to the BOCs once they receive section 271 authority to provide in-region, interLATA services. Finally, the Commission should not afford special treatment to CMRS providers, nor should it grant a blanket authorization to provide ISR to WTO countries where at least 50 percent of the settled U.S.-billed traffic on that route is at or below the relevant benchmark settlement rate.

Respectfully submitted,



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August 28, 1998

CERTIFICATE OF SERVICE

I, Anisa A. Latif, do hereby certify that a copy of the Reply Comments of Ameritech has been served on the parties on the attached service list, First Class mail, postage prepaid, on this 28th day of August 1998.

By

Anisa A. Latif

A handwritten signature in black ink, appearing to read "Anisa A. Latif", is written over a horizontal line. The signature is stylized with a large, sweeping initial 'A' and a long, horizontal stroke extending to the right.

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